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Hew Kuan Yau v Menteri Dalam Negeri & Ors

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HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW APPLICATION NO WA-25–531–11 OF 2019
AMARJEET SINGH J
20 MAY 2024

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Civil Procedure — Judicial review ('JR') — Damages payable on successful JR application — Court of Appeal ordered applicant's claim for damages in successful JR application to be assessed — Apart from claiming damages for loss of earnings and opportunities, applicant sought damages for defamation, malicious falsehood, conspiracy to injure, breach of statutory duty and misfeasance in public office — Whether no damages were payable for any of these torts as applicant had neither complied with pre-requisites of O 53 r 5 of Rules of Court 2012 nor shown that findings of COA supported his claim for any of those torts

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The applicant had authored a comic book which was published and distributed mainly to schools. Six months after the publication, the respondent ('the Minister') banned the comic book vide a prohibitory order ('PO') issued under s 7(1) of the Printing Presses and Publications Act 1984 ('the PPPA') on the ground that it was likely to prejudice public order and security and alarm public opinion. A press statement was issued by the Minister to inform the public about the banning of the book and the reasons for doing so. The High Court dismissed the applicant's challenge against the PO by way of judicial review ('JR'). The Court of Appeal ('COA') reversed the High Court's decision, quashed the PO and allowed the prayer in the JR application for damages to be assessed. The COA held that the Minister's decision to ban the comic book was irrational as there was no evidence to show that it was likely to prejudice public order. The COA found that during the six months that the book was in circulation before it was banned, no untoward incident had occurred and that, viewed objectively, 'there was nothing incendiary in the book that pits one race against another, insults anyone's racial or religious sentiment or stokes racial tension as alleged in the affidavit of the Minister'. In the instant proceedings for damages to be assessed, the applicant sought the following special damages: (a) RM1,048,000 as loss of salary at RM8,000 per month from October 2019 until August 2030 as a Chief Executive Officer ('CEO'); (b) RM88,000 in accumulated bonuses for 11 years from 2020 until 2030; (c) RM51,140 for legal fees incurred at the High Court, Court of Appeal and Federal Court (based on invoices and receipts); (d) RM2,718 comprising filing fees at the High Court, Court of Appeal and the Federal Court; (e) RM1,000 as COA costs; (f) RM325 being the cost of 13 comic books; and (g) general damages, aggravated damages and exemplary damages for the

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following causes of action in private law — misfeasance in public office, defamation, malicious falsehood, conspiracy to injure and breach of statutory duty.

Held, allowing only the claims for RM51,140 for legal fees and RM325 for the cost of 13 comic books and dismissing all the other claims:

(1) Based on the authorities and the pre-requisites under O 53 r 5 of the Rules of Court 2012 ('the ROC'), a claim for damages in a successful JR application must satisfy the following conditions: (a) the applicant must have included in his statement supporting his JR leave application, a claim for damages arising from any matter to which the application related; (b) the court was satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages; (c) the claim for damages was pleaded with the same particularity as a pleading in an ordinary action in accordance with O 18 r 12 of the ROC; and (d) the wrongful act or infringement of administrative law principle was one which could constitute a recognised private law action for damages The claim for damages could not succeed if it was merely grounded on the basis that there had been an infringement of administrative law principle by the decision-maker (see paras 17–19 & 23).

(2) The applicant's pleading for the claim for damages merely stated that he had suffered loss of earnings and benefits (including future such loss), loss of reputation and loss of opportunities consequent upon the banning of the book. The applicant's O 53 statement did not comply with the pre-requisites of O 53 r 5(1)(a) and (b). In particular, it was not shown that the Minister's alleged infringements of administrative law principles constituted a recognised tort that the applicant could claim for. No recognised tort in private law was pleaded (see paras 28–29).

(3) There was a serious deficiency in the pleadings which the applicant sought to overcome by applying at a very late stage of the proceedings — and which application was dismissed — to amend the O 53 statement to plead two private law actions in tort to prop up his claim, viz misfeasance in public office and defamation. The application sought to show that the Minister's reasons for the book ban were false and that there was mala fide in the issuance of the press statement and the PO (see paras 30–31).

(4) The applicant's claim for damages could not be sustained as the pre-requisites of O 53 r 5 ROC were not satisfied and also because the reasons given by the COA when allowing the applicant's JR application did not show that any of ingredients of the torts claimed by the applicant were satisfied (see paras 35–36).

(5) The applicant had to show that the COA's findings could constitute a recognizable tort in private law. This court found that the findings of the COA did not constitute a case for malicious falsehood or defamation or misfeasance in public office. As for the tort of conspiracy to injure, the applicant withdrew this head of claim. The claim for breach of statutory duty was clearly misconceived as no statutory duty was imposed on the Minister under s 7(1) of the PPPA under which he had acted to issue the PO (see paras 37, 39, 43, 45, 56, 60, 65 & 69).

(6) The COA struck down the PO on the ground of irrationality and not for illegality or bad faith or mala fides on the part of the Minister. No finding was made by the COA on whether the statements in the press statement were false. The only issue before the COA was whether the Minister's exercise of discretion was irrational on the question whether the book had the potential to prejudice public order and alarm public opinion (see paras 50 & 52).

[Bahasa Malaysia summary

Pemohon telah mengarang sebuah buku komik yang diterbitkan dan diedarkan terutamanya kepada sekolah-sekolah. Enam bulan selepas penerbitan, responden ('Menteri') mengharamkan buku komik tersebut melalui perintah larangan ('PO') yang dikeluarkan di bawah s 7(1) Akta Mesin Cetak dan Penerbitan 1984 ('AMCP') atas alasan bahawa ia berkemungkinan menjejaskan ketenteraman dan keselamatan awam serta menarik perhatian umum. Kenyataan akhbar telah dikeluarkan oleh Menteri untuk memaklumkan kepada orang ramai tentang pengharaman buku tersebut dan sebab-sebabnya. Mahkamah Tinggi menolak penentangan pemohon terhadap PO melalui semakan kehakiman ('SK'). Mahkamah Rayuan ('MR') mengakas keputusan Mahkamah Tinggi, membatalkan PO dan membenarkan prayer dalam permohonan SK untuk ganti rugi ditaksirkan. MR memutuskan bahawa keputusan Menteri untuk mengharamkan buku komik itu adalah tidak rasional kerana tiada keterangan yang menunjukkan ia berkemungkinan menjejaskan ketenteraman awam. MR mendapati bahawa sepanjang enam bulan buku itu diedarkan sebelum ia diharamkan, tiada kejadian yang tidak diingini berlaku dan, jika dilihat secara objektif, 'tiada apa-apa pembakar dalam buku itu yang melagakan satu kaum dengan yang lain, menghina kaum atau sentimen agama sesiapa atau mencetuskan ketegangan kaum seperti yang didakwa dalam afidavit Menteri'. Dalam prosiding semasa bagi ganti rugi yang akan ditaksiekan, pemohon menuntut ganti rugi khas berikut: (a) RM1,048,000 sebagai kehilangan pendapatan RM8,000 sebulan dari Oktober 2019 hingga Ogos 2030 sebagai Ketua Pegawai Eksekutif ('CEO'); (b) RM88,000 dalam bonus terkumpul selama 11 tahun dari 2020 hingga 2030; (c) RM51,140 untuk fi guaman yang ditanggung di Mahkamah Tinggi, Mahkamah Rayuan dan Mahkamah Persekutuan (berdasarkan invois dan resit); (d) RM2,718 yang terdiri daripada fi pemfailan di Mahkamah Tinggi,

Mahkamah Rayuan dan Mahkamah Persekutuan; (e) RM1,000 sebagai kos MR; (f) RM325 iaitu kos 13 buku komik; dan (g) ganti rugi am, ganti rugi teruk dan ganti rugi teladan bagi kausa tindakan berikut dalam undang-undang persendirian — penyelewengan dalam jawatan awam, fitnah, kepalsuan berniat jahat, konspirasi untuk mencederakan dan pelanggaran kewajipan berkanun.

Diputuskan, membenarkan hanya tuntutan RM51,140 untuk fi guaman dan RM325 untuk kos 13 buku komik dan menolak semua tuntutan lain:

(1) Berdasarkan otoriti dan pra-syarat di bawah A 53 k 5 Kaedah-Kaedah Mahkamah 2012 ('KKM'), tuntutan ganti rugi dalam permohonan SK yang berjaya mesti memenuhi syarat-syarat berikut: (a) pemohon mesti telah memasukkan dalam pernyataannya yang menyokong permohonan kebenaran SKnya, tuntutan ganti rugi yang timbul daripada apa-apa perkara yang berkaitan dengan permohonan itu; (b) mahkamah berpuas hati bahawa jika tuntutan itu telah dibuat dalam tindakan yang dimulakan oleh pemohon pada masa membuat permohonannya, dia boleh diberikan ganti rugi; (c) tuntutan ganti rugi telah diplidkan dengan kekhususan yang sama seperti pliding dalam tindakan biasa mengikut A 18 k 12 KKM; dan (d) perbuatan salah atau pelanggaran undang-undang pentadbiran prinsip adalah satu yang boleh membentuk tindakan undang-undang persendirian yang diiktiraf untuk ganti rugi. Tuntutan untuk ganti rugi tidak boleh berjaya jika ia hanya berdasarkan asas bahawa terdapat pelanggaran prinsip undang-undang pentadbiran oleh pembuat keputusan (lihat perenggan 17–19 & 23).

(2) Pliding pemohon untuk tuntutan ganti rugi hanya menyatakan bahawa dia telah mengalami kehilangan pendapatan dan faedah (termasuk kerugian itu pada masa hadapan), kehilangan reputasi dan kehilangan peluang akibat pengharaman buku itu. Penyataan A 53 pemohon tidak mematuhi pra-syarat A 53 k 5(1)(a) dan (b). Khususnya, ia tidak ditunjukkan bahawa Menteri yang didakwa melanggar prinsip undang-undang pentadbiran membentuk tort yang diiktiraf yang boleh dituntut oleh pemohon. Tiada tort yang diiktiraf dalam undang-undang persendirian telah diplidkan (lihat perenggan 28–29).

(3) Terdapat kekurangan yang serius dalam pliding yang pemohon cuba atasi dengan memohon pada peringkat prosiding yang sangat lewat — dan permohonan yang mana telah ditolak — untuk meminda kenyataan A 53 untuk memplidkan dua tindakan undang-undang persendirian dalam tort untuk meningkatkan tuntutannya, iaitu penyelewengan dalam jawatan awam dan fitnah. Permohonan itu bertujuan untuk menunjukkan bahawa alasan Menteri untuk pengharaman buku adalah palsu dan bahawa terdapat mala fide dalam pengeluaran kenyataan akhbar dan PO (lihat perenggan 30–31).

(4) Tuntutan pemohon untuk ganti rugi tidak dapat dipertahankan kerana pra-syarat A 53 k 5 KKM tidak dipenuhi dan juga kerana alasan yang diberikan oleh MR semasa membenarkan permohonan SK pemohon tidak menunjukkan bahawa mana-mana ramuan tort yang dituntut oleh pemohon telah dibuktikan (lihat perenggan 35–36).

(5) Pemohon perlu menunjukkan bahawa dapatan MR boleh membentuk tort yang boleh dikenali dalam undang-undang persendirian. Mahkamah ini mendapati bahawa dapatan MR tidak membentuk kes untuk penipuan berniat jahat atau fitnah atau penyelewengan dalam jawatan awam. Bagi tort konspirasi untuk mencederakan, pemohon menarik balik kepala tuntutan ini. Tuntutan pelanggaran kewajipan berkanun jelas disalah anggap kerana tiada kewajipan berkanun dikenakan ke atas Menteri di bawah s 7(1) AMCP di mana beliau telah bertindak mengeluarkan PO (lihat perenggan 37, 39, 43, 45, 56, 60, 65 & 69).

(6) MR membatalkan PO atas alasan tidak rasional dan bukan kerana menyalahi undang-undang atau niat jahat atau mala fides di pihak Menteri. Tiada dapatan dibuat oleh MR sama ada kenyataan dalam kenyataan akhbar itu adalah palsu. Satu-satunya isu dihadapan MR ialah sama ada penggunaan budi bicara Menteri adalah tidak rasional terhadap persoalan sama ada buku itu berpotensi menjejaskan ketenteraman awam dan menarik perhatian umum (lihat perenggan 50 & 52).]

Cases referred to

E v K [1995] 2 NZLR 239, HC (refd)

Empayar Canggih Sdn Bhd v Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia and Anor [2010] MLJU 652; [2010] 9 CLJ 46, HC (refd)

FITTERS Diversified Bhd & Ors v Mohd Roslan Mahayudin (sued as Director, Enforcement Division) & Ors [2024] 3 MLJ 937; [2024] 4 CLJ 657, CA (refd)

Groves v Wimborne (Lord) [1898] 2 QB 402, CA (refd)

Kerajaan Malaysia & Ors v Lay Kee Tee & Ors [2009] 1 MLJ 1; [2009] 1 CLJ 663, FC (refd)

Ketua Setiausaha Kementerian Dalam Negeri & Anor v The Edge Communications Sdn Bhd [2017] 4 MLJ 200; [2017] CLJU 713, CA (folld)

Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee [2019] 3 MLJ 720; [2019] 3 CLJ 729, FC (refd)

Three Rivers District Council and Others v Governor and Company of the Bank of England (No 3) [2003] 2 AC 1, HL (refd)

Tony Pua Kiam Wee v Government of Malaysia and another appeal [2019] 12 MLJ 1; [2020] 1 CLJ 337, FC (refd)

Wang Choon Yin lwn Dato' Seri Hj Mustafar bin Hj Ali, Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No 1) dan lain-lain [2020] 5 MLJ

793; [2020] 7 CLJ 621, CA (refd)
X (minors) v Bedfordshire County Council [1995] 2 AC 633, CA (refd)

Legislation referred to

Communications and Multimedia Act 1988
Printing Presses and Publications Act 1984 ss 7, 7(1), 8(2)
Rules of Court 2012 O 18 r 12, O 53 rr 3, 3(2), 5, 5(1), 5(1)(a), 5(1)(b), 5(2)
Sedition Act 1948

Shamesh Jeevaretnam (with Vince Tan Hoo Seh) (Jeeva Partnership) for the applicant.
Nur Irmawatie Daud (with Ng Wee Li) (Federal Counsel, Attorney General's Chamber) for the respondents.

Amarjeet Singh J:

INTRODUCTION

[1] This judgment concerns the approach to be taken in assessing damages sought in a successful judicial review application. The case concerns the assessment of damages sought by the applicant where the decision of the Minister of Internal Affairs ('Minister') issuing a prohibitory order under s 7(1) of the Printing Presses and Publications Act 1984 ('the PPPA') banning a comic book authored by the applicant was quashed by order of certiorari.

[2] Initially, the High Court had dismissed the application for judicial review. The Court of Appeal reversed the High Court in the ensuing appeal and ordered that the prohibitory order issued by the Minister be quashed by an order of *certiorari* and allowed the prayer that damages be assessed as pleaded in the application for judicial review. The prayer for damages was made pursuant to O 53 r 5 of the Rules of Court 2012 (hereinafter all rules mentioned refer to the Rules of Court 2012 unless stated otherwise).

[3] The assessment was carried out by way of affidavit evidence and after reading the affidavits and written and oral submission of the parties, I made the following orders in respect of special damages sought by the applicant:

(a) refusing the claim of RM1,048,000 loss of earnings (salary at RM8,000 a month from October 2019 to August 2030) as Chief Executive Officer ('CEO') of the Malaysia China Business Council;

(b) refusing the claim of RM88,000 accumulated *bonuses* for 11 years (from 2020 to 2030);

(c) allowing costs of legal fees of RM51,140,000 at the High Court, Court

of Appeal, and the Federal Court based on invoices and receipts;

(d) refusing the claim of RM2,718 as court filing fees at the High Court, Court of Appeal and the Federal Court;

(e) refusing the claim of RM1,000 as Court of Appeal costs after it was withdrawn; and

(f) allowing the claim of RM325 as the cost of 13 comic books (at RM25 per comic book).

[4] I also refused general damages, aggravated damages, and exemplary damages sought for the following causes of action in private law put forth by the applicant (see applicant's executive summary — encl 58): (a) misfeasance in public office; (b) defamation; (c) malicious falsehood; (d) conspiracy to injure; and (e) breach of statutory duty.

BACKGROUND

[5] I begin with the background leading to the instant application of assessment of damages before me.

[6] The applicant is the author of a comic book that purportedly explained and praised the 'Belt and Road Initiative' (BRI) of the People's Republic of China. The comic book was published on 18 April 2019 and distributed to mainly schools. Six months later, on 23 October 2019, the Minister for Home Affairs ('the Minister') banned the comic book *vide* a prohibitory order made and published as required under s 7(1) of the PPPA. As a result of the prohibitory order, the comic books were seized from various organisations and schools that had received the comic books.

[7] The reasons for the ban were given in a press statement and are as follows: (a) the comic book was published with the intention to promote the ideology of communism and socialism; (b) the comic book spreads wrong and confusing facts about communist while trying to raise support and sympathy towards the communist struggle; and (c) the comic book causes readers especially the younger generation to question the history of Malaysia and disputes the struggles of the past leaders/icons in fighting for independence and nation building.

[8] The applicant challenged the prohibitory order by way of judicial review at the High Court on the following grounds:

(a) the decision was unreasonable as the contents of the comic book do not fall within the ambit of s 7(1) of the PPPA;

(b) there was insufficient evidence to support the conclusion that the comic

book is likely to be prejudicial to public order, security or alarm public opinion;

(c) the decision was made in *bad faith* and tainted with bias;

(d) the decision was disproportionate;

(e) the applicant was not given a right to be heard before the prohibitory order was issued; and

(f) that s 7(1) of the PPPA was unconstitutional.

[9] The Minister averred that he formed the opinion that the book is likely or has the potential to prejudice public order by causing racial conflict after considering the available material placed before him which he reproduced in his affidavit in reply opposing the application. The learned judge of the High Court, after reviewing the facts objectively, found there was an evidentiary basis for the Minister to conclude that the book was likely to be prejudicial to public order and that the applicant had not brought his case within the established grounds of *illegality, irrationality, proportionality,* and *procedural impropriety* what more the complaint of *bad faith* and *bias*. The learned judge also said that under s 7(1) of the PPPA, the Minister has 'absolute discretion' to issue a prohibitory order and as such cannot be said to have committed an error of law. Section 7(1) of the PPA statutorily requires the issuance and gazetting of the prohibitory order.

[10] The appellant appealed to the Court of Appeal. For its importance, the grounds of appeal for determination were listed by the Court of Appeal as follows:

(a) whether the decision of the Minister under s 7 of the PPPA is subject to judicial review?

(b) if so, to what extent can it be examined on the merits?

(c) whether the High Court is correct in holding that there was a proper exercise of ministerial discretion on the facts?

(d) whether a right of hearing must be accorded before banning the book? and

(e) whether s 7 of the PPPA should be struck down as unconstitutional?

[11] It is abundantly clear that there was no ground of appeal pleaded that the Minister had acted in *bad faith* or that his decision was tainted with *bias* when making the prohibitory order.

[12] In respect of the first ground of appeal, the Court of Appeal held that the 'absolute discretion' accorded to the Minister under s 7(1) of the PPPA is

reviewable though readily agreeing that in matters concerning public order or national security, greater deference should be paid to the opinion of the Minister.

[13] In respect of the second ground of appeal, the Court of Appeal held that the High Court is not precluded from examining the evidence to determine whether the decision to ban the comic book, though legal in the sense that the Minister was empowered to do so under s 7(1) of the PPPA, was nonetheless an irrational exercise of power in that a similarly circumstanced Minister would not have arrived at the same decision.

[14] In respect of the third ground, the Court of Appeal, on an objective examination of the facts before the Minister including examining the contents of the comic book found no evidence that suggested prejudice to public order or likelihood thereof that permitted the invocation of the power under s 7(1) of the PPPA. The fact that the comic book was in circulation for some six months before it was banned with no untoward incident occurring was telling against the fear of the Minister that the book was prejudicial to public order. The Court of Appeal held that the exercise of discretion of the Minister was irrational in the sense that a similarly circumstanced Minister would not have made the same decision to issue the prohibitory order.

[15] In respect of the fourth and fifth grounds of appeal, the Court of Appeal held that they were not prepared to quash the decision to issue the prohibitory order on the ground that the right to be heard was not given and that s 7(1) of the PPPA was not unconstitutional respectively.

[16] As a result, the Court of Appeal on 6 July 2022 granted prayers (1), (2), (3), (5) and (6) in the application for judicial review (encl 1). Prayer (5) was for the return of the comic books while prayer (6) was for damages to be assessed.

DECISION OF THE COURT

A claim of damages under O 53 r 5

[17] The claim for damages was made under O 53 r 5. The starting point would be the reproduction of the rule which provides as follows:

> (1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if —
>
> (a) he has included in the statement in support of his application for leave under Rule 3 a claim for damages arising from any matter to which the application relates; and
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> (b) the Court is satisfied that, if the claim had been made in an action

A begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, Rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

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[18] It is clear from the phraseology of O 53 r 5(1)(a) that the claim for damages must be joined in the statement in support of the application for leave under O 53 r 3(2) ('the O 53 statement'). *Order 53 r 5 is devised such that in judicial review proceedings apart from granting the public law remedy sought the* C *court could in the same proceedings if so joined, consider granting a claim for damages in private law. The condition is that the claim for damages must arise from the matter to which the judicial review application relates*.

[19] It is also clear from the phraseology of O 53 r 5(1)(b) that *the claim for* D *damages must be the type in which he could have been awarded damages by way of a private law action.* In other words, the claim for damages envisaged in O 53 r 5 is a recognised tort in private law. It is made very clear by O 53 r 5(2) that the claim for damages is subject to O 18 r 12. This means that a claim for damages must be pleaded and pleaded with sufficient particularity in the O 53 E statement before it can be considered. Order 18 r 12 read as follows:

(1) Subject to paragraph (2), *every pleading must contain the necessary particulars of any claim,* defence or other matter pleaded including, *without prejudice to the generality of the foregoing words —*

F (a) particulars of any misrepresentation, fraud, breach of trust, wilful default, or undue influence on which the party pleading relies; and

(b) *where a party pleading alleges any condition of the mind of any person,* whether any disorder or disability of mind or *any malice,* fraudulent intention, *or other condition of mind except knowledge, particulars of the facts on which the party relies.*

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[20] The phrase 'necessary particulars of any claim' means that the applicant is required to plead in the O 53 statement the recognised tort or breach of contract in private law and to provide particulars if any 'malice' or 'other H condition of mind' is relied on. In this regard, *Gordon, Judicial Review and Crown Office Practice* (1999) adopted by the Court of Appeal in *Wang Choon Yin lwn Dato' Seri Hj Mustafar bin Hj Ali, Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No 1) dan lain-lain* [2020] 5 MLJ 793; [2020] 7 CLJ 621 is instructive, as there it was said as follows:

I Where damages are sought they must be pleaded with the same particularity as in an ordinary action ... The inclusion of such a remedy on judicial review is a concession to procedural convenience.

[21] The Court of Appeal in *Wang Choon Yin* also adopted the following

principle established by Mohamad Ariff Yusof J (as His Lordship then was) in *Empayar Canggih Sdn Bhd v Ketua Pengarah Bahagian Penguatkuasa Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Malaysia and Anor* [2010] MLJU 652; [2010] 9 CLJ 46:

> [19] It then appears that a claim for damages in a judicial review application cannot be grounded only on the basis that there has been merely an infringement of the principles of administrative law. The application has to proceed further and establish that he has a right to damages at private law if initiated in an ordinary action.

[22] The right to damages in private law means any cause of action in private law that entitles a person or body to make a claim for damages. It is trite that a cause of action for damages in private law is usually a recognised tort or involves a breach of contract. In this regard, the learned author Clive Lewis in *Judicial Remedies in Public Law (*5th Ed, Sweet & Maxwell) said and I quote:

> An individual may seek compensation against public bodies for harm caused by the wrongful acts of such bodies. Such claims may arise out of the exercise of statutory or other public powers by public bodies. Decisions or measures which are *ultra vires* do not of itself entitle the individual to damages for any loss suffered. *Any individual must establish that the unlawful action also constitutes a recognised tort or involves a breach of contract.* (Emphasis added.)

[23] Based on the authorities, the prerequisites for a successful claim for damages under O 53 r 5 can be summarised thus:

(a) the claim for damages must be pleaded with the same particularity as pleading an ordinary action in the O 53 statement (in accordance with O 18 r 12);

(b) the claim for damages must arise from a successful judicial review application;

(c) a claim for damages cannot succeed if merely grounded on the basis that there has been an infringement of the principles of administrative law by the decision maker; and

(d) the wrongful act or infringement of the principles of administrative law found would be such as to constitute a recognised private law action for damages.

[24] Only after the prerequisites as summarised above are satisfied that the calculation to determine the appropriate figures to constitute damages can then be carried out. This is clear as the case before me is on all fours with the decision of the Court of Appeal in *Ketua Setiausaha Kementerian Dalam Negeri & Anor v The Edge Communications Sdn Bhd* [2017] 4 MLJ 200; [2017] CLJU 713 where the Court of Appeal ordering damages to be assessed said:

An assessment of damages exercise is not confined to merely calculating the figures to constitute damages. It is, therefore, our considered view, that the issue of whether the applicant had come within the bounds of O 53 r 5(1)(b) was a juridical issue to be determined at the hearing of the assessment of damages.

[25] The rationale for the amendment to O 53 to include a claim for damages which did not exist in the earlier O 53 was stated by Michael Supperstone and James Goudie, *Judicial Review* (1997) as follows:

> The new RSC Ord 53 is a reform concerned with remedies and with public law, not extending, or diminishing, substantive rights in private law. It creates no new cause of action. It enables a claim for damages for breach of a private law duty resulting from unlawful conduct by a public authority to be joined with a public law application to establish the unlawfulness rather than being claimable only in an action begun by writ. That is of value because it avoids the instigation of duplicate proceedings.

[26] According to a case of *The Edge Communications Sdn Bhd* before, I can carry out the exercise of calculating the appropriate damages, I must first be satisfied that the conditions of O 53 r 5 have been satisfied, in particular, the claim for damages constituting a recognised tort in private law has been pleaded and pleaded with particulars as required in private law. The failure would be a defective claim for damages depriving this court of jurisdiction to grant damages.

[27] In view of the above, it becomes necessary to scrutinise the claim for damages as pleaded by the applicant in the O 53 statement. This is to see whether it has been pleaded that the infringements of administrative law principles by the Minister constitute a recognised action in private law sounding in damages and where required that particulars are pleaded.

Whether the conditions of O 53 r 5 satisfied

[28] What is the claim for damages in private law pleaded by the applicant? The pleading on the claim for damages is set out in paras 6.1 to 6.5 of the O 53 statement. It merely states that the applicant has suffered damage and losses as a result of the bad publicity generated in the media caused by his investigation by the police on 18 October 2019 into offences under the Sedition Act 1948 and the Communications and Multimedia Act 1988 followed with the issuance of the prohibitory order (ie on 28 October 2019) by the Minister he resigned from the position as Chief Executive Officer ('CEO') of the Malaysia — China Business Council ('MCBC') caused by the adverse publicity in the media. As a result, he claimed the following general damages:

(a) loss of earnings and future earnings until 2030 and benefits as a result of having had to resign as CEO;

(b) loss of reputation; and

(c) loss of opportunity to obtain business opportunities and appointment to any government agencies both at the Federal and State levels.

[29] It is clear, that the O 53 statement was not pleaded the prerequisites of O 53 r 5(1)(a) and (b), in particular, that the Minister's infringements of administrative law principles constituted a recognised tort. In fact, no recognised tort in private law was pleaded. All that was pleaded was that the applicant is entitled to general damages pleaded for having to resign as CEO. Even, if I took the infringements committed by the Minister as found by the Court of Appeal for quashing the prohibitory order, it is not sufficient to sound a claim for damages. As stated by Mohamad Ariff Yusof J in *Empayar Canggih Sdn Bhd*:

> [19] It then appears that a claim for damages in a judicial review application cannot be grounded only on the basis that there has been merely an infringement of the principles of administrative law.

[30] Thus, there was a serious deficiency in the pleadings. It was no wonder or no surprise at all, that the applicant, at a very late stage of the proceedings filed a notice of application (encl 62) on 13 September 2023 to amend the O 53 statement to plead two private law actions in tort to prop up his claim:

(a) *misfeasance in public office;* and

(b) *defamation,*

caused by the prohibitory order and the press release which contained the reasons for issuing the prohibitory order. The amendment was to show that the reasons stated in the press statement were false, and the prohibitory order together with the press statement were issued *mala fide,* to specify the recognised tort in private law and the particulars thereof.

[31] The notice of application to amend was dismissed by me for various reasons. The dismissal of the notice of application does not concern this judgment as there was no appeal against my decision there. The only appeal against my decision is against the damages I did not allow (as shown in para [3] above), namely: (a) the loss of income of RM1,048,000 loss of earnings (salary at RM8,000 a month from October 2019 to August 2030); (b) the claim of RM88,000 as accumulated *bonuses*; (c) general damages; (d) aggravated damages; and (e) exemplary damages.

[32] However, the act of filing the notice of application to amend is indicative of the fact that the solicitors of the applicant had become aware that the pleadings in the O 53 statement on the claim for damages was seriously deficient for noncompliance of O 53 r 5(1) and (2). There was nothing pleaded

to say that the grounds of review ie infringement of administrative law principles by the Minister wound constitute a recognised tort in private law resounding in the damages.

[33] On the above reason, the claim for damages would fail. The claim for damages is therefore dismissed.

THE ACTIONABLE TORTS

[34] It was submitted in the applicant's written submission and the executive summary that actionable torts in private law were proven and that the applicant was therefore entitled to have his damages assessed. The torts in private law alleged proven were: (a) conspiracy to injure; (b) breach of statutory duty; (c) malicious falsehood; (d) misfeasance in public office; and (e) defamation.

[35] I was unable to agree with this submission. First, as I had already decided in the preceding paragraphs that the prerequisites of O 53 r 5 were not satisfied, and that warranted the claim for damages be dismissed.

[36] The second reason for dismissing this submission was that the administrative infringement found committed by the Court of Appeal in its judgment (reversing the High Court which had dismissed the application for judicial review) did not satisfy the ingredients of the recognised torts said to be proven. The reasons given by the Court of Appeal will determine whether a tort in private law is proven or not. I found that the reasons of the Court of Appeal did not constitute any of the recognised torts put forth by the applicant. The above would form my second ground for dismissing the claim for damages.

Conspiracy to injure

[37] This head of a claim was withdrawn during oral submissions. In my mind, rightly so, as the elements for the tort of conspiracy did not even feature in the applicant's grounds. There were, in fact, no meetings of minds by two or more persons to injure the applicant. The applicant sought to challenge the decision of the Minister who was the sole decision maker according to the affidavits and the documentary evidence. Since the claim under this head was withdrawn the same is dismissed.

Breach of statutory duty

[38] The applicant submitted that the claim for breach of statutory duty is proven. The submission made was as follows:

(a) where the Minister abuses his power and maliciously invokes s 7(1) of the PPPA with malice then it amounts to a breach of statutory duty

(para 87 of the applicant's written submissions); and

(b) where the prohibitory order was issued in bad faith for the Minister's own self-interest then the Minister has breached his statutory duty (para 1.5 of the applicant's executive summary).

[39] I found both submissions incomprehensible and had nothing to do with the tort of breach of statutory duty. As such, I dismissed the submission as devoid of merit. It is to be noted that the section under which the Minister issued the prohibitory order was s 7(1) of the PPPA. This section does not impose a statutory duty on the Minister. The section confers a statutory discretionary power on the Minister.

[40] It is elementary that before there can even be a tort of breach of statutory duty *there must be a statutory duty imposed by statute. There must be a duty first before that duty can be breached.* When considering a claim for breach of statutory duty the precise formulation of the statutory provision is in question. The language of the statute must impose an unqualified statutory obligation or a statutory prohibition or statutory command on the defendant for a statutory duty to exist (*Kerajaan Malaysia & Ors v Lay Kee Tee & Ors* [2009] 1 MLJ 1; [2009] 1 CLJ 663; *E v K* [1995] 2 NZLR 239; *Groves v Wimborne (Lord)* [1898] 2 QB 402).

[41] However, the language of s 7(1) of the PPPA is as follows:

> *If the Minister is satisfied* that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, *he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed,* the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned. (Emphasis added.)

[42] The language of s 7(1) of the PPPA ie 'if the Minister is satisfied … he may in his absolute discretion' confers a power and certainly nothing that resembles a duty. Further, if a statutory duty exists and is breached then two other ingredients must be proven according to the case of *X (minors) v Bedfordshire County Council* [1995] 2 AC 633 as follows:

> However, a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that *the statutory duty was imposed for the protection of a limited class of the public* and that Parliament *intended to confer on members of that class a private right of action* for breach of the duty. (Emphasis added.)

[43] In the instant case, the basic ingredient of the tort of breach of statutory duty, that is to say, the language of the statute provides duty is not present in s 7(1) of the PPPA. Thus, no tort of breach of statutory duty exists if there is no duty provided by statute. The claim for breach of statutory duty was clearly misconceived in law, it has no basis whatsoever and for that reason dismissed.

Malicious falsehood and defamation

[44] The press statement dated 23 October 2019 is the nub of the claim for damages predicated on the tort of malicious falsehood and defamation as submitted in the applicant's written submissions as follows:

(a) the explanation given (ie reasons provided for issuing the prohibitory order) by the Minister in the press statement was false and had subjected the applicant to public hatred, public criticism, ridicule, other negative comments, opinions, and vilification (para 17.2 of the applicant written submissions);

(b) the press statement was both defamatory and maliciously false and in the premises, the tort of defamation and malicious falsehood has been established (para 31 of the applicant's written submissions);

(c) the Court of Appeal finding that the reasons provided for issuing the prohibitory order were unjustified and, on this premise, 'the press statement contained inaccurate contents and had defamed the applicant' (para 66 of the applicant's written submissions);

(d) the press statement contains statements that are maliciously false and therefore the tort of malicious falsehood applies (paras 71, 73, 74, 75 & 76 of the applicant's written submissions);

(e) there is no possible defence that can succeed in light of the findings of the Court of Appeal and the respondents have failed to rebut the applicant's averments (paras 77 of the applicant's written submissions); and

(f) as a result of the Minister's actions the applicant suffered a loss of reputation and is entitled to damages (paras 78 of the applicant's written submissions)

[45] I am unable to agree with the submission. The findings of the Court of Appeal do not constitute a case for malicious falsehood or defamation. For a wrongful decision to sound in damages in judicial review proceedings, this court must be satisfied, that, had the applicant brought an action in private law he would have been awarded damages. It was, thus, incumbent on the applicant to demonstrate that the findings of the Court of Appeal would constitute a recognisable tort in private law as required by O 53 r 5(1)(b) (see the decision of the Court of Appeal in *The Edge Communications Sdn Bhd* case (see para [25] above).

[46] It is therefore critical to identify the findings made by the Court of Appeal when making the decision to quash the prohibitory order. The reasons for issuing the prohibitory order are housed in the press statement. Therefore, it is necessary to look at the press statement before identifying the findings of the Court of Appeal.

THE PRESS STATEMENT

[47] The press statement begins with informing the public at large that a prohibitory order has been issued. It then proceeds to state the grounds on which the Minister made the prohibitory order, *to wit,* that the content of the comic book is 'likely to be prejudicial to public order' and also, 'likely to alarm public opinion' (para 3). The Minister was satisfied that the contents of the comic book (paras 4–5):

(a) tended to promote the ideology of communism and socialism;

(b) would spread inaccurate and confusing facts about communism, as well as, raise support and sympathy for the communist struggle;

(c) would cause readers, especially, the younger generation, to question the history of Malaysia and the struggles of the country's past leaders for independence and nation building; and

(d) failed to consider the sensitivities of Malaysians which are made up of diverse races and religions and may be detrimental to national unity and harmony.

[48] The Minister issued the prohibitory order against the comic book which was required to be *gazetted* under s 7(1) of the PPPA. The purpose of the press statement was to inform the public at large of the existence of the prohibitory order, the reasons for making the order, and the various stipulated acts if contravened by any person would amount to an offence that is punishable under s 8(2) of the PPPA.

FINDINGS OF THE COURT OF APPEAL

[49] The Court of Appeal made the following findings. They first held that while greater deference would be paid to the exercise of discretion of the Minister in matters of security of the country and public order, the court nevertheless had the power to scrutinise such decisions under the established grounds of review including reviewing the decision for substance ie merits and not only the process. The Court of Appeal recognised that the Minister was exercising a discretionary power well within his jurisdiction under s 7(1) of the PPPA.

[50] The Court of Appeal secondly held that while in the instant case, the court was not precluded from examining the evidence to determine whether the decision to ban the comic book, though a legal act, in the sense that the Minister was empowered to do so under s 7(1) of the PPPA, the decision was so unreasonable that a similarly circumstanced Minister would not have arrived at the same decision. In administrative law language, the prohibitory order was struck down based on an *irrationality* error. It is abundantly clear to any reader of the judgment that the prohibitory order was not struck down on an *illegality* or *bad faith* or *mala fides* on the part of the Minister.

[51] The question the Court of Appeal said was crucial in the appeal before them further amplifies that the falsity of the Minister's statements was not an issue:

> To our mind, *the crucial question is not whether the book had promoted the BRI or expressed support for socialism as practised in China or whether it contained historical inaccuracies*. The question is whether the book was likely to prejudice or had the potential or had prejudice public order and alarm public opinion. (Emphasis added.)

[52] Thus, there was no finding whether the statements were false or expressed support for communism or socialism as practised in China. The only issue is whether the exercise of discretion of the Minister was irrational on the question whether the book was likely to prejudice or had the potential to prejudiced public order and alarmed public opinion.

[53] The Court of Appeal then carried out a detailed examination of the affidavit of the Minister wherein the Minister had specifically identified the various pages of the comic book that purportedly support the Minister and ultimately came to the following findings:

> [26] In respect of the allegation that the comic book promoted communism and supported its cause, we note that the Minister did not refer in his affidavit to any particular content of the comic book to show that to be the case. Instead, there is a general statement that the appellant promoted communist ideology in the comic book.
>
> [28] We have perused the above-mentioned averments and the content of the comic book. *The Minister may have good reason to disagree with the appellant's interpretation of history, his worldview, or his comments on current affairs particularly in respect of China's BRI policy and its treatment of the Muslim minority in Xinjiang. The Minister may also have reason to disagree with the suggestion that a survey showed that a certain percentage of Malaysians sympathised with the cause of the Islamic State. It may well be that professional historians, the majority of the public, or even us, may disagree with the appellant's take on history and current events.* But surely disagreement with someone's view, even if justified on the basis that the author did not get the facts right or misinterpreted them, cannot be a reason to ban a book. Otherwise, the

> constitutional right to freedom of expression would be rendered illusory. It would even imperil academic research. In this context, we note that the Minister had disagreed with the view expressed in the comic book that diplomatic relations between the Ming Dynasty of China and the Malacca Sultanate enabled the latter to prosper. *We would reiterate that, viewed objectively, there is nothing incendiary in the book that pits one race against another insults anyone's racial or religious sentiment, or stokes racial tension as alleged in the affidavit of the Minister.* (Emphasis added.)

[54] There were two reasons given by the Court of Appeal in its decision for the finding of *irrationality.* The first was that the court's commitment to freedom of expression demands, that, freedom of expression cannot be suppressed unless the situation created by allowing the freedom is pressing and the community interest is endangered and the second was that the anticipated danger should have proximate and direct nexus with the expression contemplated and likened it to an equivalent of a 'spark in a powder keg' that would incite racial unrest, disharmony or riots. This was coupled with the fact that the Court of Appeal, observed that the comic book was in circulation for some six months with no untoward incident that made the fears held by the Minister of racial unrest and disharmony unfounded. The Court of Appeal was also not impressed with the 81 police reports lodged against the comic book which factor was given great weight by the learned High Court judge. The Court of Appeal said:

> In our opinion, it is unacceptable if the number of police reports or adverse responses on social media is considered an important yardstick by which a decision can be made to ban a publication.

[55] Having identified the findings, the next step is to determine whether the same constitutes malicious falsehood and defamation in private law. It must be noted that malicious falsehood and defamation are distinct torts. They may arise from the same facts but the elements to prove each tort are different.

DECISION ON MALICIOUS FALSEHOOD

[56] I found that the findings of the Court of Appeal when quashing the prohibitory order did not constitute the tort of malicious falsehood. My reasons are as follows. Firstly, the elements of the tort of malicious falsehood have not been satisfied. The elements of the tort of malicious falsehood according to the decision of the Federal Court in *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 3 CLJ 729 are:

(a) the statements made by a defendant in the article complained of were false;

(b) the defendant had uttered and published the words in the first article

maliciously ie, without just cause or excuse; and

(c) that special damage has followed as the direct and natural result of the publication.

[57] A careful perusal of the judgment of the Court of Appeal will reveal that the elements of the falsity of the statements and malice on the part of the Minister were not in issue before the court. As a result, no findings were made in respect of both these elements. Therefore, the claim for malicious falsehood was not made out from the successful judicial review application which was based solely on *irrationality* of the exercise of discretion by the Minister to ban the comic book.

[58] Secondly, the facts show that the Minister had no malice toward the applicant. In *Raub Australian Gold Mining Sdn Bhd* (followed by the Court of Appeal in *FITTERS Diversified Bhd & Ors v Mohd Roslan Mahayudin (sued as Director, Enforcement Division) & Ors* [2024] 3 MLJ 937; [2024] 4 CLJ 657), the word 'malice' as defined in *Osborn's Concise Dictionary* (7th Ed) was accepted to mean:

> [41] ... Ill-will or evil motive: personal spite or ill-will sometimes called actual malice, express malice or malice in fact. In law, an act is malicious if done intentionally without just cause or excuse. *So long as a person believes in the truth of what he says and is not reckless, malice cannot be inferred from the fact that his belief is unreasonable, prejudiced, or unfair (Horrocks v Lowe* [1972] 1 WLR 1625). (Emphasis added.)
>
> [42] In law, an act is malicious if done intentionally without just cause or excuse. *So long as a person believes in the truth of what he says and is not reckless, 'malice' cannot be inferred from the fact that his belief is unreasonable, prejudiced, or unfair* (see: *Anne Lim Keng See v The New Straits Times Press (M) Bhd & Anor And Other Appeals* [2008] 3 MLJ 492). (Emphasis added.)

[59] In the analysis of the Court of Appeal, the Minister believed in the truth of what he said and was not reckless. Further, and more importantly, malice cannot be inferred from the fact that the Minister's belief is unreasonable, prejudiced, or unfair (see *Raub Australian Gold Mining Sdn Bhd* and *Fitters Diversified Bhd).* To recall, the Court of Appeal found the Minister's belief of the facts he relied on was unreasonable but not that the facts were false. In the circumstances, the claim for damages based on malicious falsehood has no basis and for that reason dismissed.

Decision on defamation

[60] I found that the findings of the Court of Appeal when quashing the prohibitory order did not constitute defamation. My reasons are as follows.

Firstly, the elements of defamation have not been satisfied. In the instant case, we are dealing with 'libel' — a permanent form of publication ie the press statement. The key elements of defamation *re* libel are trite and have recently been reiterated by the Federal Court in *Raub Australian Gold Mining Sdn Bhd* as follows:

(a) the plaintiff must show that the statement bears defamatory imputations;

(b) the statement must refer to or reflect upon the plaintiff's reputation; and

(c) the statement must be published to a third person by the defendant.

[61] A careful perusal of the judgment of the Court of Appeal will reveal that the elements of defamation were not in issue before the court. No findings were made on either of these elements. Therefore, the claim for defamation was not made out from the successful judicial review application which was based solely on the exercise of discretion by the Minister to ban the comic book. This was in line with the averment in the respondent's affidavit in reply (encl 45 para 15) where it was said that at the substantive stage of the judicial review, no elements of the defamation were ventilated or proved.

[62] Secondly, the Minister's sole focus in the press statement was: (a) that the comic book was a prohibited publication; (b) any person committing any of the prohibited acts concerning the comic book act commits an offence and is liable to punishment; and (c) and his reasons as to why the comic book was to be banned. There was nothing said of the applicant in the press release. The applicant was not mentioned at all and neither was anything said in the press release concerning the applicant which would refer to or reflect upon his reputation. The press release concerned the contents of the comic book and not the applicant who authored the book.

[63] Thirdly, the claim of defamation raised without pleading and particulars in the O 53 statement have deprived the applicant of pleading the defence of privilege, absolute privilege, or at the very least qualified privilege. If raised privilege would be an absolute defence to the claim of defamation unless malice is proved. These are issues of fact not suitable to be determined by affidavit evidence in judicial review proceedings. The defendant cannot be deprived of raising the defence of absolute privilege or qualified privilege. In the circumstances, the claim for damages based on malicious falsehood has no basis and for that reason dismissed.

Misfeasance in Public Office

[64] Like the claims for conspiracy to injure, breach of statutory duty, and malicious falsehood, the claim for misfeasance in public office suddenly reared its head during submissions. I will deal with this claim for damages the same way as the other claim for damages.

[65] I found that the findings of the Court of Appeal when quashing the prohibitory order did not constitute misfeasance in public office. My reasons are as follows. Firstly, the elements of the tort of misfeasance in public office have not been satisfied. In the recent Federal Court decision in *Tony Pua Kiam Wee v Government of Malaysia and another appeal* [2019] 12 MLJ 1; [2020] 1 CLJ 337 was said that the elements of misfeasance in public office and its role was laid down by the House of Lords in *Three Rivers District Council and Others v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1. The tort, it was said, is founded on the unifying element of abuse of public power in bad faith. The rationale of the tort is that in a legal system based on the rule of law, executive or administrative power, may be exercised only for the public good and not for ulterior and improper purposes. The Federal Court further elaborated on the tort as follows:

> [185] It is therefore an intentional tort. *The element which receives the most emphasis is that of bad faith, ie the abuse of power and the targeted malice or the complete indifference to the effect of the abuse of power on the plaintiff or a class of such persons.* It is also the element which makes this tort hard to plead and to prove as it is only in rare circumstances that such facts subsist as would allow the plea to remain on the record. *In many instances, the plea is struck out as it is simply insufficient. This is because it is not every act or omission on the part of a public officer which lends itself to the bringing of an action premised on this tort.* It requires outrageous conduct with the requisite intention to injure and this serves as a safeguard to preclude a multitude of actions from being initiated. (Emphasis added.)

[66] In *Three Rivers District Council and Others v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1 the elements of the tort of misfeasance in public office are set out and summarised in *Tony Pua Kiam Wee* as follows:

(a) the defendant is a public officer;

(b) the exercise of power by the public officer;

(c) the public officer either:

(i) acted knowing that he had no power to do the act complained of and that the act would probably injure the plaintiff; this type of case involves *bad faith* in as much as the public officer does not have an honest belief that his act is lawful (ie untargeted malice by recklessly being indifferent as to the limit of their public power or authority); or

(ii) conduct specifically intended to injure a person or persons: this type of case involves *bad faith* in the sense of the exercise of public power for an improper or ulterior motive (ie targeted malice by abusing his public power or authority).

[67] In his written submissions (encl 54 at para 22) it was alleged that the Minister's decision to issue the prohibitory order was tainted with *bad faith* and it amounts to an *abuse of power by a public authority* with the intention of injuring the applicant (ie targeted malice). In the executive summary (encl 58), the applicant further expended on his submission of targeted malice by stating:

> The 1st respondent is a public officer, a position held by Tan Sri Muhyiddin Yassin at the material time and we submit had in *bad faith as a public officer* issued the prohibitory order dated 23.10.2019 for his own interest and political mileage. The 1st respondent had intentionally used the prohibitory order as a political leverage to advance his political interests. Tan Sri Muhyiddin Yassin ultimately became the Prime Minister of Malaysia in 2020 until his resignation. The 1st respondent was aware that his act of issuing the prohibitory order would harm the applicant. The Court of Appeal's judgment supports the applicant's case as submitted above. As a result, the applicant suffered reputational loss, loss of income, loss of opportunity, and legal costs incurred.

[68] A careful perusal of the judgment of the Court of Appeal will reveal that the elements of targeted malice were not in issue and neither was *bad faith* or *malice* in respect of misfeasance in public office established. The submission of the applicant that the Court of Appeal's judgment supports the applicant's case is not correct. No findings were made on the elements of targeted malice or *bad faith* or *malice* on the part of the Minister. One only has to read the Court of Appeal's judgment to see that the submission of the applicant was completely devoid of merit.

[69] Therefore, the claim for damages predicated on misfeasance of public office is not made out from the successful judicial review application which was based solely on the exercise of discretion by the Minister to ban the comic book.

CONCLUSION

[70] Following the Court of Appeal's decision in *The Edge Communications Sdn Bhd* that an assessment of damages exercise is not confined to merely calculating the figures to constitute damages but also to see whether the threshold of O 53 r 5 has been satisfied as a juridical issue I find that the claim of damages predicated on conspiracy, defamation, malicious falsehood, breach of statutory duty and misfeasance in public office not established by the decision of the Court of Appeal when allowing the prayers sought by the applicant (encl 1) have not satisfied O 53 r 5. The assessment of damages is misconceived in law and dismissed for the above reason.

Only claims for RM51,140 for legal fees and RM325 for the cost of 13 comic books allowed; and all other claims dismissed.

Reported by Ashok Kumar